

THE ZIONIST SOVEREIGNTY OBJECTIVE IN THE MID-
DLE EAST AND ITS IMPACT UPON ZIONIST-ISRAEL'S
POLICIES IN THE OCCUPIED TERRITORIES

by

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BY

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I. LEGAL ISSUES AND SCOPE OF STUDY

The Six Day Arab-Israeli War which commenced on June 5, 1967 was the third major outbreak of major hostilities between Israel and her Arab neighbors since the proclamation of Israel's independence in 1948. As a result of the Six Day War Israel seized and continues to occupy the West Bank of the Jordan River, the Gaza Strip, the Sinai Peninsula and the Golan Heights of Syria. These territories placed Israel in control of an area three times larger than that held on June 4. Israel has steadfastly maintained that it continues to occupy the Arab territories seized for the purpose of security and that the occupation is conducted in accordance with the humanitarian principles laid down in the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949 (hereafter referred to as the Civilians Convention).¹ Nevertheless, questions have arisen concerning Israel's territorial objectives within the occupied territories. Additionally, issues have been raised in respect to Israel's compliance with the Civilians Convention.

In as much as fundamental human values, particularly the right to self-determination and the dignity of the human person, are at stake, the purpose of this study is to juridically evaluate Zionist sovereignty objectives and Israel's compliance with the Civilians Convention.

II. BASIC GOALS OF ZIONISM

Ever since the founding of modern day political Zionism by Theodor Herzl, the ultimate aim of Zionism has been the restoration and preservation of Jewish sovereignty in an independent Jewish State.² It would be this sovereign State which would achieve for the Jewish people the two underlying aims of Zionism, which are in the words of Dr. Goldmann, the president of The World Zionist Organization:

(T)o save Jews suffering from discrimination and persecution by giving them the opportunity for a decent and meaningful life in their own homeland; second, to ensure the survival of the Jewish people against the threat of disintegration and disappearance in those parts of the world where they enjoy full equality of rights.³

The ultimate goal of Jewish sovereignty in a Jewish State was first articulated by Herzl in his now famous book The Jewish State, which he wrote in 1896 in reaction to the anti-Semitism rampant in Europe during the 19th Century. What he called for was "the restoration of the Jewish State."⁴ What he asked for was:

Let the sovereignty be granted us over a portion of the globe large enough to satisfy the rightful requirements of a nation; the rest we shall manage for ourselves.⁵

It was also Herzl who first defined for Zionism what the configuration of the future State would be. He stated:

The northern frontier is to be the mountains facing Capodocia; the southern the Suez Canal. Our slogan shall be: 'the Palestine of David and Solomon'.⁶

It is indeed interesting to note at this point that the present territories held by Zionist Israel are all well within the territorial goals of Herzl.

In 1897 Herzl convened the First Zionist Congress at Basle, Switzerland. The Congress proceeded to establish the World Zionist Organization as it is known today,⁷ and the Congress set forth its aims in the Basle Declaration in the following words: "The aim of Zionism is to create for the Jewish people a home in Palestine secured by public law."⁸ As a means to attain this goal the Basle Declaration called for the promotion of Jewish colonization of Palestine and the initiation of preparatory steps leading towards the eventual obtainment of government consent for the Zionist aim. With the creation of the World Zionist Organization and the proclamation of Zionist aims in the Basle Declaration there is the official launching of the Zionist movement as it exists today.

It should be noted that the Basle Declaration employed the ambiguous term "home" instead of "State" in expressing its ultimate goal. It must be made clear that the adoption of the word "home" was a move made for the purpose of enhancing the Zionist program among both Jews and non-Jews opposed to Zionist nationality and nationhood concepts.⁹ There was never any intention to derogate from Herzl's original aim of ultimate creation of a Jewish State, and this is evident from statements made by Herzl himself. In commenting on the ambiguous concept created

by the employment of the term "home" Herzl was led to remark: "No need to worry....The people will read it as 'Jewish State'."¹⁰ That Zionism was originally aiming at the creation of a sovereign Jewish State in Palestine is also evident from the following comment by Herzl:

If I were to sum up the
Basle Congress in one word
--which I shall not do openly
--it would be this: at
Basle I founded the Jewish
State. If I were to say
this today, I would be met
by universal laughter. In
five years, perhaps, and
certainly in fifty, every-
one will see it.¹¹

Accordingly, the ultimate aim of Zionism to create an independent State, as witnessed by its fruition in the establishment of present day Israel, remained intact; it was only concealed by the use of terminology which would later be incorporated in official agreements and subsequently interpreted as authorization for an independent State.

The establishment of Israel in 1948 was certainly a manifestation of the Zionist dream. The territories seized in the Six Day War of 1967, would if ever amalgamated with Israel certainly accord with the Zionist aim.

Implicit to the aims of Zionism is a claim of sovereignty based upon Biblical and historical right. Zionism also justifies its sovereignty in Palestine upon the Balfour Declaration, the League of Nations Mandate, the United Nations partition resolution, and conquest. It is to the juridical evaluation of these claims to sovereignty within their historical context that attention will now be directed.

III. JURIDICAL EVALUATION OF ZIONIST CLAIMS TO SOVEREIGNTY WITHIN THEIR HISTORICAL CONTEXT

A. CLAIM TO SOVEREIGNTY BASED UPON BIBLICAL PROMISE

That the Bible forms a basis for asserting Zionist claims to sovereignty in Palestine is evident from the following statement made by Israel's Chief Rabbi Nissim relative to the territories seized by Israel during the Six Day War:

Jerusalem and the land of Israel are holy to us. The land was promised to us by the Almighty, and all the prophets foretold its return to us. Therefore, it is forbidden for any Jew even to consider returning any part whatsoever of the land of our forefathers.¹²

The Zionist claim of right to sovereignty in Palestine based upon Biblical promise must be rejected since the Bible is not considered a basis in international law for recognition of the legality of States.¹³ If it were not for the fact that so many are misled by Zionist Biblical claims, discussion of this claim would end at this point. The reality of the situation is that so many Jews, and even Christians, approve of the assertion of this claim which is based upon certain promises made by God to Abraham and his descendants in the book of Genesis 15:18:

Unto thy seed have I given this land, from the river of Egypt unto the great river, the river Euphrates.

There are numerous other passages which could be quoted, but simply are not because the passage set forth is the most representative and

relevant. It is believed by some that these promises were made to Jews and Jews alone. However, Biblical scholars have pointed out that such is not the case.¹⁴ The promises were made to the seed of Abraham which included the Arabs descended from Abraham's oldest son Ishmael.¹⁵ As such the Biblical promise gives the Arabs a good, if not better, claim to sovereignty in Palestine than the Jews, many of whom are descendant of converts with no possible relation to Abraham. As aforementioned, a Biblical claim to sovereignty has no basis in international law. The Biblical refutation is presented only to enlighten those who would seek to give international sanction to a Zionist State based upon improper interpretation of the Bible.

B. CLAIM TO SOVEREIGNTY BASED UPON HISTORICAL RIGHT

Since the conquest of Jerusalem and Palestine by Rome in 63 B.C. there was no Jewish State in Palestine until the establishment of Israel in 1948. The Jews had their first contact with Palestine about 1800 B.C. when Abraham led his followers to the outskirts of Palestine. History reveals that up until the kingdoms of Saul, David and Solomon, Hebrew tribes conquered and settled among the Canaanites and were governed by Judges. Around 1000 B.C. King Saul united the various tribes into one kingdom. King David, Saul's successor, extended the kingdom's borders by conquering Amman, Moab, Edom, Damascus and Jerusalem, the latter of

which he made his capital. David was succeeded by his son Solomon who built the first temple in Jerusalem.¹⁶ At this point it should be added that it is this former kingdom that provides the religious and emotional basis for Jewish interest in Palestine and Zionist territorial claims.

The united kingdom was divided into the kingdoms of Israel and Judah around 900 B.C. and they were overwhelmed from the 8th Century B.C. onwards by successive waves of Persians, Assyrians and Babylonians. In 143 B.C. Jewish sovereignty was once again restored until the conquest by Rome in 63 B.C. A Jewish revolt against Roman authority in 135 A.D. led to the destruction of Jerusalem and its temple and the great dispersion of Palestine's Jews to various parts of the world, commonly known as the diaspora.¹⁷

It is this historic connection with Palestine upon which the Zionists base their historic right to sovereignty. What can be seen is that the Arabs have just as much ancient historic connection with Palestine as the Jews. It is clear that the ancient Hebrews were not the original inhabitants of Palestine. The original inhabitants were the Canaanites who were conquered by the Hebrews. The Canaanites being of Semitic-Arab stock would give the Arabs of Palestine as much historic right to Palestine as the Jews today, many of whom are not of Semitic origin but of different ethnic backgrounds. Additionally, when the Hebrews originally came to Palestine they never occupied or ruled over all of the area that is today Israel. The coastal plain of Palestine remained under the authority of the Philistines who gave Palestine its name.¹⁸

From a juridical standpoint the Zionist claim to sovereignty in

Palestine based upon historic right must be rejected. For the recognition of a valid historic title in international law it is necessary that the claimant State exercise effective sovereignty over the territory claimed and that this display of sovereignty be uninterrupted and peaceful and acquiesced in by other States.¹⁹ The principle of effective sovereignty, acquiesced in by other States was lucidly described in the Island of Palmas Arbitration. In this case a dispute arose between the Netherlands and the United States concerning the sovereignty over the Island of Palmas. The United States maintained that they were entitled to be regarded as territorial sovereign on the basis of succeeding to Spain, who in turn had established its title to the island on the basis of discovery. The Netherlands opposed the United States claim by arguing that it was entitled to legal sovereignty by virtue of its continuous and peaceful display of actual and real possession over the island for several centuries. In his decision Judge Huber, the sole arbitrator, found in favor of the Netherlands by holding that title based upon effective sovereignty, exercised continuously and peacefully for several centuries is superior to a claim based on discovery alone. In the words of Judge Huber:

(D)iscovery alone, without any subsequent act, cannot at the present time suffice to prove sovereignty over the Island of Palmas....

...(A)n inchoate title could not prevail over the continuous and peaceful display of authority by another State....²⁰

In considering the Zionist claim to historic title over Palestine it becomes clear that Jewish sovereignty was interrupted after the conquest by Rome and not reestablished until 1948. Prior to 1948 effective sovereignty was clearly exercised over Palestine by Rome, the Moslem Arabs, the Crusaders and the Ottoman Empire. From 1923 until 1948 Great Britain administered Palestine under a League of Nations mandate. Ever since the establishment of Zionist Israel in 1948, the surrounding States have refused to recognize its sovereignty over any territory in its possession.²¹ This lack of acquiescence would by itself render control non-peaceful. However, even despite this lack of acquiescence, the situation of Israeli control over Arab territory is rendered non-peaceful by the existence of continued hostilities since the time of the establishment of Israel. Accordingly, the conclusion is inescapable that the Zionist claim to sovereignty in Palestine based upon historic right finds no support in international law.

C. CLAIM TO SOVEREIGNTY BASED UPON THE BALFOUR DECLARATION

After the Basle Congress, the Zionists set out to achieve governmental support for their aim of creating a State for the Jewish people in Palestine. In 1898 Herzl sought in vain the support of Germany's Kaiser Wilhelm II.²² In 1901 and 1902 he sought the aid of Abdul Hamid,

Sultan of the Ottoman Empire, but he was turned down.²³ Herzl then turned his attention to Britain which did ultimately offer the East African Protectorate of Uganda.²⁴ While Herzl was willing to accept this offer as a temporary solution,²⁵ the Seventh Zionist Congress in 1906, two years after Herzl's death, rejected any territory other than Palestine with the following resolution:

The Zionist Organization stands firmly by the fundamental principle of the Basle programme, namely the creation of a homeland guaranteed by public law for the Jewish people in Palestine, and reject both as an aim and as a means, every colonizing action outside Palestine and the neighboring countries (emphasis supplied).²⁶

This resolution is most significant in two respects: firstly, the Zionist movement was from that time on unequivocally and resolutely determined on a homeland in Palestine; and secondly, for the fact that it revealed for the first time a united front aimed at possible territorial expansion into neighboring countries, a fact which throws glaring light on the events of June 1967.

The Zionist movement, under Dr. Chaim Weizmann, continued its efforts to obtain British approval and support for its aims. As early as 1906 Weizmann had interested the British government through Lord Arthur Balfour in the possibility of a Jewish home in Palestine.²⁷ After the outbreak of World War I, the British government entered into negotiations with the Zionists concerning a Jewish home in Palestine and what emerged

was the issuance of the Balfour Declaration on November 2, 1917 which stated:

His Majesty's Government view with favour the establishment in Palestine of a national home for the Jewish people, and will use their best endeavours to facilitate the achievement of this object, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country.²⁸

While altruistic motives did to some extent stand behind the Balfour Declaration, it has become clear that the issuance of the document was directly motivated by the need of the British government to obtain support of world Jewry at a time when the allied position during World War I was doing badly. In words of British Prime Minister Lloyd George:

It was important for us to seek every legitimate help we could get. We came to the conclusion from information we received from every part of the world that it was vital we should have the sympathies of the Jewish community.²⁹

Despite the two apparently unequivocal safeguard clauses contained in the Balfour Declaration protecting the civil and religious rights of the existing indigenous non-Jewish communities in Palestine and the political rights of Jews in any other nation, the Zionists interpret the Balfour Declaration as juridical recognition of a Jewish State in Palestine

and juridical acceptance of the Jewish people nationality claim.³⁰

It must be pointed out that at the time of the issuance of the Balfour Declaration in 1917, Palestine and the surrounding territories were under recognized Ottoman sovereignty, and thus Great Britain could not enter into an agreement, binding in international law, promising a national home in an area over which Britain did not have sovereignty. Furthermore, the promise could be considered invalid in international law because it derogated from the internationally accepted legal principle recognizing the right of self-determination of people.³¹

Nevertheless, the League of Nations Mandate for Palestine incorporated within its provisions the essential terms of the Balfour Declaration promising the establishment of a national home for the Jewish people in Palestine along with the same safeguards protecting the civil and religious rights of the indigenous non-Jewish communities in Palestine and the rights and political status enjoyed by Jews in any other country.³² The incorporation of the terms of the Balfour Declaration is significant because it involved explicit agreement by the League to the terms of the Balfour Declaration and as such amounted to multilateral approval of its terms and rendered the Balfour Declaration a valid part of international law.³³

The Balfour Declaration having been recognized by the League of Nations as a valid part of international law, it becomes necessary to provide an analysis as to what was expressly agreed to between Great Britain, and subsequently by the League of Nations. The Zionist approach to interpretation is that the terms of the Balfour Declaration are clear

and unambiguous.³⁴ As previously mentioned they interpret the political promise clause, that is, the promise to establish a national home for the Jewish people, as juridical acceptance for the establishment of a Jewish State in Palestine. Additionally, they interpret the Balfour Declaration as acceptance of their Jewish People nationality claim, a claim which will not undergo comprehensive analysis within this study but which will nevertheless be discussed in so far as it is relevant in providing an understanding as to what was agreed to between the parties in respect to the political promise.

In respect to the safeguard clauses, the Zionists interpret them as mere agreement of assurance that the non-Jewish population will be accorded protected minority status in a Jewish State,³⁵ and that Jews who are members of a collective nationality will as individuals be protected in their States of regular nationality.³⁶

The Zionist clear and unambiguous interpretative approach to the Balfour Declaration cannot be accepted because a rational and logical approach to interpretation requires at the minimum the giving of meaning to an agreement which accords with "the objectives of the participants and principal purposes sought to be effectuated."³⁷ In this respect the following enlightened approach is set forth:

The process of interpretation, rightly conceived, cannot be regarded as a mere mechanical one of drawing inevitable meaning from the words in a text, or of searching for and discovering some preexisting specific intention of the parties with respect to every situation arising under a treaty. It is precisely

because words used in an instrument rarely have exact and single meaning, and because all possible situations which may arise under it cannot be or at least are not, foreseen and expressly provided for by the parties at the time of its drafting, that the necessity for interpretation occurs. In most instances, therefore, interpretation involves giving a meaning to a text--not just any meaning which appears to the interpreter, to be sure, but a meaning which in the light of the text under consideration and of the particular case at hand appears in his considered judgment to be one which is logical, reasonable, and most likely to accord with and to effectuate the larger general purpose which the parties desired the treaty to serve.³⁸

In addition the following rules of interpretation should be resorted to because of their suitability: 1) agreements should be interpreted in a manner so as not to conflict with generally recognized principles of international law;³⁹ 2) the whole of the agreement must be taken into consideration if any one of the terms are ambiguous;⁴⁰ 3) a good starting point in ascertaining the objectives of participants and the principle purposes to be effectuated is the record of negotiations (travaux préparatoires), a well established method of interpretation utilized by international tribunals.⁴¹

Turning to the negotiating history of the Balfour Declaration, it is clear that at the commencement of negotiations, the British government's

position was to work in favor of a promise establishing a refuge or asylum in Palestine for Jewish victims of persecution.⁴² The Zionist position on the other hand was presented in the form of a draft proposal submitted by Lord Rothschild to Lord Balfour, Secretary of State for Foreign Affairs, stating:

1. His Majesty's Government accepts the principle that Palestine should be constituted as the National Home of the Jewish people.
2. His Majesty's Government will use its best endeavours to secure the achievement of this object and will discuss the necessary methods and means with the Zionist Organization.⁴³

It is implicit in the proposed Zionist draft that they were seeking 1) recognition of a Jewish State in Palestine, 2) recognition of the Jewish people nationality concept and 3) recognition of a juridical connection between "the National Home" and "the Jewish people."⁴⁴ Additionally, it is quite apparent that the proposed draft contained neither safeguards for the indigenous non-Jewish Arab communities in Palestine nor for anti-Zionist Jews opposed to Zionist nationhood and nationality concepts.

Aware of the nationalistic aspirations among the native Palestinian Arabs, and the need for their support in the war effort, British officials quite naturally opposed the comprehensive demands of the Zionists as contained in the Zionist draft.⁴⁵ Additionally, prominent British Jews opposed the aims of the Zionists, especially Edwin Montagu, British Secretary of State for India, and Mr. Claude Montefiore, both of whom were participating in the negotiations. Montagu was appalled at the prospect of the British government accepting the Zionist proposals because

he considered that the creation of a national home for Jews would make it difficult for him to exercise political authority on behalf of Britain.⁴⁶

As a result of the objections, there emerged from the negotiations a government counter-proposal known as the Milner-Amery draft which diluted the demands of the Zionists into a proposal by which the British government would use its best endeavors to establish in Palestine "a national home for the Jewish race" with clear safeguards providing:

(T)hat nothing will be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine or the rights and political status enjoyed in any other country by such Jews who are fully contented with their existing nationality and citizenship.⁴⁷

It is thus evident that there was a definite interest by the British government to protect the claims and interests of the Palestinian Arabs and non-Zionist Jews. In fact Weizmann, who was also participating in the negotiations, considered this counter proposal a painful recession and a great departure from the original Zionist aim.⁴⁸

Although the Milner-Amery draft contained definite safeguards, the counter-proposal nevertheless did not meet with the approval of anti-Zionist Jews, especially Montefiore who objected to the implicit implication of a Jewish nationality in the phrase "a national home for the Jewish race."⁴⁹ These same objections were voiced by Justice Brandeis of the United States when Weizmann wired to him the text of the counter-proposal. As a result Brandeis proposed that "Jewish race" be altered

to "Jewish people."⁵⁰ Additionally, Brandeis and other leading American Zionists requested substitution of the words "the rights and civil political status enjoyed by Jews in any other country" for "the rights and political status enjoyed in any other country by such Jews who are fully contented with their existing nationality and citizenship."⁵¹ Brandeis' participation in revising the counter-proposal was necessitated because of his status in being one of President Wilson's closest confidants. What the Zionists needed was the President's approval, knowing full well that the British government would be reluctant to act favorably without American approval.⁵² On October 17, 1917 President Wilson sent his approval of the text as revised by Brandeis.⁵³

Thus, there was a further recession from original Zionist demands. What finally emerged from all these recessions after taking into account the claims and interests of indigenous Arabs and non-Zionist Jews, was the officially issued declaration of November 17, 1917, as previously set forth.

In applying the appropriate rules of interpretation to the Balfour agreement we find from the negotiating history that the maximum demands of the Zionists were reduced to an equivocal political promise limited by express safeguards, safeguards that were inserted to meet the objections of those individuals who were desirous to protect the aspirations of the indigenous population of Palestine and desirous to protect non-Zionist Jews from becoming unwillingly members of a Jewish State with Jewish nationality. To interpret the safeguards in the manner desired by the Zionists would not meet the objections of the non-Zionists, for whom they were inserted. Accordingly, the safeguards must in accordance

with reason and logic be interpreted as limiting the political promise to something less than a national Jewish State. To put it another way, they must be interpreted in a broad manner because they were inserted in opposition of the comprehensive designs of the Zionists.

Furthermore, to interpret the Balfour Declaration in a manner consistent with the ultimate but rejected objectives of the Zionists would render the Balfour Declaration inconsistent with international law. To interpret the Balfour Declaration as authorization for the creation of a Jewish State in Palestine would conflict with the right of the Arab indigenous population to self-determination, a principle firmly implanted in international law.⁵⁴

How then must the Balfour Declaration be interpreted? It has become clear that the British objective was to help provide a sanctuary in Palestine for oppressed Jews. This objective was not opposed by the Zionists in as much as this was part of their overall objective. What the Zionists sought to superimpose upon the British humanitarian objective was recognition of a Jewish State in Palestine and Jewish people nationality. This, as has been discussed, was rejected. Accordingly, the Balfour Declaration must be interpreted as a humanitarian act to provide a sanctuary in the form of a cultural home in Palestine where those Jews who desire can immigrate and settle among the indigenous population without infringing upon the recognized rights of the indigenous non-Jewish Arab population or the rights of non-Zionist Jews in any other country.

D. CLAIM TO SOVEREIGNTY BASED UPON THE BRITISH MANDATE

The British Mandate came into effect on September 23, 1923, and as before mentioned the terms of the Balfour Declaration became incorporated into the terms of the Mandate. Accordingly, the Balfour Declaration became an international agreement and a valid part of international law. The Zionists interpret the Mandate provisions incorporating the political promise clause and the safeguard clauses of the Balfour Declaration in the same manner as they interpret the Balfour Declaration standing by itself. Additionally, they argue that the promises contained in the Mandate were to encompass the territory on both sides of the River Jordan.⁵⁵ The interpretation of the Zionists can be rejected for the same reasons as have been expressed in the analysis of the Balfour Declaration in the preceding section. There are, however, even additional factors which clearly require rejection of the Zionist "clear and unambiguous" interpretation of the Mandate provisions. The preamble of the British Mandate stated that the purpose of the Mandate was to give effect to Article 22 of the Covenant of the League of Nations. Implicit in the reading of Article 22 is the principle of self-determination,⁵⁶ and that the Mandatory Power was to assist the peoples of the Mandate to achieve full self-government and independence at the earliest possible date. Additionally Article 22 recognized the provisional independence of certain territories formerly belonging to the Turkish Empire. Article 22, paragraph 4 stipulated:

Certain communities, formerly
belonging to the Turkish
Empire, have reached a stage
of development where their

existence as independent nations can be provisionally recognized, subject to the rendering of administrative advice and assistance by a mandatory power until such time as they are able to stand alone.

In as much as Palestine is a territory formerly belonging to the Turkish Empire, its independence was provisionally recognized by the Covenant. That the League recognized this to be a Palestine nation and not a Jewish State is clear from the terms of Article 7 of the Mandate which provided:

The administration of Palestine shall be responsible for enacting a nationality law. There shall be included in this law provisions framed so as to facilitate the acquisition of Palestinian citizenship by Jews who take up their permanent residence in Palestine.

Therefore, when considering the terms of the Mandate along with the supreme constitutional instrument of the League, namely the Covenant, it is clear that the League did not authorize the creation of a Jewish State with Jewish nationality. What the League recognized was the right of Jews to immigrate to Palestine wherein they could if they so desire take up the nationality of the Arab Palestinian nation. Accordingly, the Zionist interpretation to the contrary must be rejected.

E. CLAIM TO SOVEREIGNTY BASED UPON THE UNITED NATIONS PARTITION RESOLUTION

The partition of Palestine was the direct result of two and one half decades of animosity created by the immigration of Jews into Palestine under the provisions of Article 6 of the Mandate which provided:

The Administration of Palestine, while ensuring that the rights and position of other sections of the population are not prejudiced, shall facilitate Jewish immigration under suitable conditions.

At the beginning of the Mandate Moslem and Christian Arabs numbered 92 percent of Palestine's population while Jews comprised 8 percent.⁵⁷ From the outset of the Mandate the Arab population became concerned over the immigration of Jews to Palestine which resulted in the Arabs being dispossessed of their historic lands to make way for the incoming Jews. The Zionist Jewish Agency was in control of land acquisition and was able to purchase Arab lands at knock down prices.⁵⁸

The Arabs became incensed over the increased immigration and the loss of their lands and began to insist ever more strongly that any future independent government of Palestine must be responsible to a government whose Parliament would be elected by the total population comprised of Moslems, Christians and Jews.⁵⁹

With the rise of Hitler to power in Germany in 1933, Jews fled in increasing numbers to Palestine. This increase in Jewish immigration only served to further heighten Arab fears. Their concept of a future independent State became jeopardized as the proportion of Jews climbed to 30 percent of the population.⁶⁰ Frenetic appeals were made by the

Arabs to Britain to halt Jewish immigration, to restrict the sale of Arab land to Jews, and to grant Palestine immediate independence.⁶¹

The British attempted to mollify the Arabs by offering a legislative assembly to be elected by proportional representation which would give the Arabs a majority vote. The Zionists, however, protested to this formula which would destroy their goal of creating a Jewish State controlled by Jews. As a result the British backed down from their offer.⁶²

The Arabs being driven to desperation launched large scale violence in 1936 which led to Jewish counter-violence. All of Palestine became an armed camp.⁶³ In an effort to stem the revolt and bring peace to the area, the 1936 Peel Commission, appointed by the British Parliament, recommended the partition of Palestine. Both the Twentieth Zionist Congress meeting in 1937 and the Arabs rejected the partition proposal.⁶⁴ As a result violence rose to an even higher pitch.⁶⁵

Finally, with violence continuing, Britain called a conference in London at which it was hoped a solution could be reached which would satisfy both Arabs and Zionists.⁶⁶ A solution could not be reached, and as a result, the British issued the MacDonald White Paper of 1939. Therein Britain set forth the policy that Palestine would move progressively towards self-government. Furthermore, Jewish immigration for the first five years was to be limited to 75,000 with immigration thereafter to be at the complete acquiescence of the Arabs of Palestine.⁶⁷ While this amounted to a victory for the Arab position, it was clearly considered by the Zionists as a defeat and a betrayal by Britain of its promises.⁶⁸

During World War II the political climate in Palestine became considerably calmer as attention was focused on an allied victory.⁶⁹

Nevertheless, the Jewish Agency was able to undertake illegal immigration of Jews into Palestine during the war period.⁷⁰ Additionally, in 1942 the Zionists were able to call a Zionist conference at the New York Biltmore Hotel where they rearticulated their aim for a Jewish State in unequivocal language. The Conference produced a declaration which stated in part:

The Congress urges that the gates of Palestine be opened; that the Jewish Agency be vested with control of immigration into Palestine and with the necessary authority for upbuilding the country, including the development of its occupied and uncultivated lands; and that Palestine be established as a Jewish Commonwealth integrated in the structure of the new democratic world.⁷¹

After the war world Jewry was horror struck at the inhuman slaughter of 6,000,000 Jews by the Nazi regime, and the Zionists began the final drive to obtain a Jewish State in Palestine as a refuge for oppressed Jews. Illegal immigration was increased and in 1946 Jewish terrorist campaigns were launched against the British administration in Palestine, most notably by the Haganah, the Irgun and Stern organizations.⁷² Once again civil war was under way. Once again the British offered partition as a solution, and once again the Zionists and Arabs rejected the proposal.⁷³ In despair and weakened by its war sacrifice Britain concluded that it could no longer administer the Mandate and requested the United Nations on April 2, 1947 to place the Palestine question on the agenda of the

General Assembly.⁷⁴ On November 29, 1947, in opposition of Arab desires, the General Assembly voted 33 to 13 with 10 abstentions to partition Palestine into Jewish and Arab States with economic union and United Nations trusteeship for Jerusalem and the Holy Places.⁷⁵

The whole Arab world protested to the partition proposal, and once again civil war broke out in Palestine. Atrocities mounted on both sides, the most notable being the Irgun massacre of 250 Arab men, women and children at Dein Yassin in April 1948.⁷⁶

On May 14, 1948, one day before the end of the British Mandate, the Zionists proclaimed the independent State of Israel. The proclamation of independence proclaimed within its text the independence of Israel by virtue of the alleged historical right of the Jewish people, the alleged right of independence recognized in the Balfour Declaration and the Mandate, and by virtue of the General Assembly partition resolution.⁷⁷

The pertinent section of the November 29, 1947 General Assembly partition resolution upon which the Zionists base further justification for sovereignty is the one in which the General Assembly:

Recommends to the United Kingdom, as the Mandatory Power for Palestine, and to all other Members of the United Nations the adoption and implementation, with regard to the future government of Palestine of the Plan of Partition with Economic Union....

At this point it should be mentioned that the partition resolution was a violation of the United Nations Charter in that it failed to accord to the indigenous people of Palestine their right to self-determination.⁷⁸

This right is specifically recognized by Article I of the Charter which lists as an aim of the world organization the "respect for the principle of equal rights and self-determination." The right of self-determination is additionally set forth in respect to non-self governing territories in Article 73 of the Charter by the requirement that "the interests of the inhabitants of these territories are paramount" and by the requirement "to take due account of the political aspirations of the peoples." Furthermore, it violated the provisions of Chapter II (Article 75-85) on the International Trusteeship System, in which the United Nations set forth the conditions under which it could take action in regard to certain territories including Mandates. Under Article 75, the United Nations could administer and supervise "such territories as may be placed thereunder by subsequent individual agreements." Article 80 provides in part:

Except as may be agreed upon in individual trusteeship agreements...placing each territory under the trusteeship system, and until such agreements have been concluded, nothing in this Chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any States or any people or the terms of existing international instruments to which Members of the United Nations may respectively be parties.

Thus, there could be no alteration of the rights granted to the indigenous Arabs of Palestine by the Mandate until a trusteeship agreement would be drawn up. No such agreement was ever entered into in the case of Palestine. Accordingly, the partition resolution, which

unquestionably altered the fundamental rights of the Palestinian people, was in violation of Article 80 of the Charter.⁷⁹

Turning to the nature and juridical effect of the partition resolution itself, it is submitted that it consists of nothing more than an unimplemented recommendation of the General Assembly. It is generally considered that the General Assembly has no power to adopt decisions or resolutions binding in effect except in matters in regard to which a specific jurisdiction has been conferred upon it, such as election of the members of various United Nations organs, or participation in the admission, suspension, or expulsion of members.⁸⁰ The right to decide with binding effect with respect to settling of political disputes by partition is not an enumerated power given to the General Assembly enabling it to decide with compulsory effect. This lack of competency was apparently recognized by the General Assembly itself in phrasing its resolution in the form of a recommendation. If the General Assembly assumed it had such power and wished to decide with binding effect, it would appear logical that the General Assembly would have employed within its resolution language more decisive and unequivocal than the word "Recommends."

Thus, aware of its lack of power the General Assembly cleverly sought to implement and legalize an otherwise invalid resolution by calling upon the Security Council in the same partition resolution to determine "as a threat to the peace, breach of the peace or act of aggression, in accordance with Article 39 of the Charter, any attempt to alter by force the settlement envisaged by this resolution."

In February 1948, the Security Council began consideration of the General Assembly's partition resolution. Immediately, the question of the competency of the Security Council to settle political disputes by enforcing partition came under discussion. In this respect the comments of the United States Representative to the Security Council are pertinent:

The recommendations of the General Assembly have great moral force which applies to all Members regardless of the views they hold or the votes they may have cast on any particular recommendation....

The Security Council is authorized to take forceful measures with respect to Palestine to remove a threat to international peace. The Charter of the United Nations does not empower the Security Council to enforce a political settlement whether it is pursuant to a recommendation of the General Assembly or of the Security Council itself. What this means is this: The Security Council under the Charter can take action to prevent aggression against Palestine from outside. The Security Council, by these same powers, can take action to prevent a threat to international peace and security from inside Palestine. But this action must be directed solely to the maintenance of international peace. The Security Council's action, in other words, is directed to keeping the peace and not to enforcing partition.⁸¹

The end result was that the Security Council refused to implement the partition resolution. A summarized description of what lay behind the ultimate refusal by the Security Council to implement the partition resolution has been lucidly described as follows:

(M)ost of the council members made it clear that they did not regard the General Assembly resolution 181(II), including the partition provision, as binding upon the Council, and that the Council would determine as a threat to the peace, breach of the peace or an act of aggression in any event if the Palestine situation so warranted, without reference to the request to that effect contained in the resolution. Specifically, in regard to the questions of competence to enforce the partition plan, the Council as a whole considered itself legally incompetent. More important, it was generally of the view that the partition plan had no practicability, for any attempt at the enforcement of the plan would further aggravate the Palestine situation which the General Assembly and the Secretary-General hoped to avoid.⁸²

Accordingly, the conclusion is inescapable that the Zionist claim to sovereignty in Palestine based upon the partition resolution contravened fundamental provisions of the United Nations Charter relative to self-determination; secondly, because the General Assembly lacked authority to effect partition; and thirdly, because the Security Council refused to implement the partition resolution, realizing that its powers can be directed only towards the maintenance of international peace and not to the settlement of a political question through partition.

F. CLAIM TO SOVEREIGNTY BASED UPON CONQUEST

The proclamation of Israel's independence led to the invasion of Palestine by the armies of Egypt, Jordan, Syria, Lebanon and Iraq.⁸³ These hostilities came to an end by Israel signing an armistice with each of the Arab States involved except Iraq. The armistice agreements were intended as interim measures until such time as a permanent peace settlement could be negotiated. They were to provide the parties security from attack, and they were not to be interpreted as political settlements fixing permanent territorial boundaries. Nevertheless, Israel was left in control of territory approximately one third larger than that granted it under the General Assembly partition resolution.⁸⁴ An added result was that 750,000 Arabs fled as refugees to the neighboring Arab States.⁸⁵

On May 12, 1949, an initiative for peace was undertaken by the signing of the Lausanne Protocol in which Israel and the Arab States accepted a proposal which provided a framework for the discussion of territorial questions, namely that any territorial settlement should accord substantially with the boundaries set forth in the General Assembly partition resolution.⁸⁶ A few days later Israel proposed that the international frontiers of Mandatory Palestine be considered the frontiers of Israel. The Arabs protested that the Israeli proposals constituted a repudiation by Israel of the terms of the Protocol, to which the Israeli delegation replied that "it could not accept a certain proportional distribution of territory agreed upon in 1947 as criterion for a territorial settlement in present circumstances."⁸⁷ In essence Israel was continuing its claim to sovereignty based upon the Palestine Mandate.

There being no settlement of the territorial question in accordance with the Lausanne Protocol, Israel's continued occupation of new territories caused the Arabs to harden against her. The Arabs initiated boycotts against Israel, and Egypt closed the Suez Canal to Israeli shipping. In 1955 total blockade was effectuated against Israeli shipping through the Gulf of Aqaba.⁸⁸ In retaliation Israel struck back in 1956 by joining forces with France and Britain, who were still chafing over Egypt's nationalization of the Suez Canal, in attacking and seizing the Sinai Peninsula.⁸⁹ However, after strong denunciation from the United Nations and prodding from the United States, Israel was forced to withdraw behind the 1949 armistice lines.⁹⁰

In an effort to help secure the peace and to safeguard Israeli shipping through the Gulf of Aqaba, the United Nations Emergency Force (UNEF) took up border supervision between Israel and the United Arab Republic.⁹¹ The years following the creation of the UNEF were years of continuing border tension accompanied by an arms build up on both the Arab and Israeli side. The years also witnessed the creation of the Palestine Liberation Organization and the Palestine Liberation Army, both of which promoted border disturbances and raids against Israel.⁹² Tension rose to new heights when Israel responded to the commando raids by making strong and devastating retaliatory raids against Arab villages and military installations.⁹³

The climax was reached in mid May 1967 when information was received by the Arab States that Israel was massing troops along the Syrian border in preparation for attack upon that State. In response to this information the United Arab Republic and Syria went into military coordination.

On May 16, 1967, the United Arab Republic declared a state of emergency and requested the United Nations to remove the UNEF from Egyptian soil. On May 17, Iraq and Jordan placed their forces on alert. This was followed the next day by an order from United Nations Secretary-General U-Thant to the UNEF to withdraw. When the UNEF forces withdrew from Sharm-el-Sheikh which overlooks the Straits of Tiran, President Nasser took measures to once again close the Gulf of Aqaba to Israeli ships and all ships carrying strategic cargo to Israel.⁹⁴

Israel responded by launching the Six Day War against its neighboring Arab States. As is well known, Israel seized and continues to occupy the West Bank of the Jordan River, the Gaza strip, the Sinai Peninsula and the Golan Heights of Syria.⁹⁵ A tragic consequence of these hostilities was the displacement of 800,000 Arabs which created a worse refugee problem. Approximately, 300,000 old refugees from 1948, 200,000 Syrians and 300,000 Egyptians fled the newly occupied territories.⁹⁶

On November 22, 1967, the Security Council called for the "Withdrawal of Israeli armed forces from the territories occupied in the recent conflict."⁹⁷ The significance of this call for the withdrawal of Israeli forces, is the fact that the resolution implicitly called only for withdrawal beyond the 1949 armistice lines. Thus the Security Council, latently condoned by omission the territorial gains made by Israel in 1948 while rejecting the 1967 acquisitions of territory. It is clear that Israel has no intention of ever returning the territory seized in 1948-49. Israel's position is that the armistice agreements established new boundaries.⁹⁸ Additionally, it has become clear that

Israel has sovereignty designs on the territories occupied in 1967. In respect to the newly occupied territories, Israel has resettled portions of its own population in these territories.⁹⁹ Additionally, Israel has annexed East Jerusalem and high Israeli officials have stated that Israel will not withdraw from Jerusalem and that it will not withdraw from occupied areas such as the Golan Heights, the Gaza Strip and portions of Sinai.¹⁰⁰ Recently, some Zionist officials have demanded the annexation of all the occupied territories and their resettlement by Jews for the sake of strategic interests and in the name of historic rights.¹⁰¹

In view of the invalidity of all the previously discussed claims to sovereignty in the Middle East, the only other basis upon which the Zionist State of Israel can base a sovereignty claim within areas occupied by it is by conquest.

Prior to the 20th Century title to territory by conquest was a recognized principle of international law.¹⁰² However, since that time the inadmissibility of territorial acquisition by force of arms has become a well established principle of international law, and this principle is applicable to the aggressor and non-aggressor alike.¹⁰³ This principle was assumed by the League of Nations as a necessary implication of the Covenant's guarantee of the territorial integrity of all members;¹⁰⁴ it was implicit in the 1928 Kellogg-Briand Pact for the Renunciation of War;¹⁰⁵ it was specifically recognized by the American States in the Buenos Aires Declaration of 1936,¹⁰⁶ the Lima Declaration of 1938¹⁰⁷ and the Charter of the Organization of American States signed on April 30, 1948.¹⁰⁸ Finally, the principle of no acquisition of territory by force is a necessary implication of Article 2, paragraph 4 of

the United Nations Charter which states:

All Members shall refrain
in their international re-
lations from the threat or
use of force against the
territorial integrity or
political independence of
any state....

In view of the principle of the inadmissibility of territorial acquisition by war, it is clear that Zionist Israel cannot assert any claim of sovereignty over the territory acquired by the use of force and its attempt to do so by any past or future annexation must of necessity be rendered null and void.¹⁰⁹

IV. JURIDICAL EVALUATION OF ZIONIST-ISRAEL'S COMPLIANCE WITH THE CIVILIANS CONVENTION

A. THE NATURE, PURPOSE AND APPLICABILITY OF THE CIVILIANS CONVENTION

In view of the atrocities and brutal treatment accorded combatants and civilians during World War II, it became necessary after that war to convene a conference at Geneva for the purpose of codifying into international law humanitarian rules which would prevent a recurrence of such actions. As a result four conventions were drafted and became known as the Geneva Conventions of 1949. The first three Geneva Conventions deal with 1) the amelioration of the condition of the wounded and sick in armed forces in the field;¹¹⁰ 2) the amelioration of the condition of the wounded, sick and shipwrecked members of armed forces at sea;¹¹¹ and 3) the treatment of prisoners of war.¹¹² The fourth Convention, known as the Civilians Convention, is designed for the protection of civilian persons in time of war.¹¹³

Collectively, the Geneva Conventions constitute one branch of the law of war known as the "Law of Geneva" and should be distinguished from the other branch of the law of war known as the "Law of the Hague" which was established by the Conventions of 1899 and 1907.¹¹⁴ The difference between the two branches is that the "Law of Hague" lays down the rights and duties of belligerents in conducting military operations and limits the methods of warfare, while the "Law of Geneva" is designed "to ensure respect, protection and humane treatment of war casualties and noncombatants."¹¹⁵ Their similarity lies in the fact that both these branches of the law of war contain humanitarian principles.¹¹⁶ The "Law of the Hague," however, is politically motivated and based to great extent on

military necessity, while the Geneva Conventions originated outside any political considerations solely for the purpose of making individual and humanitarian principles paramount by securing maximum respect of the individual by forbidding unnecessary suffering.¹¹⁷ Furthermore, in deference to fundamental human rights, the principle of "military necessity" is severely restricted in the Geneva Conventions by Article 1 of each Convention. This common article states: "The High Contracting Parties undertake to respect and ensure respect of the present Convention in all circumstances." (emphasis supplied). Accordingly, the Conventions control the operation of "military necessity" and are in no way subject to it.¹¹⁸ It is true that a number of the provisions contained in the Conventions permit derogation of certain fundamental rights in the case of imperative "military necessity." However, where derogation is not permitted by specific authorization within a provision, the effect of Article 1 is to positively exclude any consideration of "military necessity" in carrying out the obligations in question.¹¹⁹

Thus, the Geneva Conventions establish within the framework of positive international law a universally accepted guarantee of the fundamental rights of individuals in time of conflict, that is to say when such rights are most threatened. As Dr. Jean S. Pictet, Director of the International Committee of the Red Cross emphasized:

The Geneva Conventions start from the hypothesis that law is a primordial element of civilization.... Their aim is to safeguard respect for the human person, the fundamental rights of man and his dignity as a human being, in the hope that universal peace may one day be established.¹²⁰

With respect to the Civilians Convention, it can be said that its need was necessitated by the total lack of human respect accorded civilians during the Second World War, especially those poor and unfortunate beings who found themselves at the cruel "mercy" of the Axis Powers in areas under their occupational control. It is common knowledge that during World War II civilians faced at the hands of the Nazis unconscionable destruction of property, reprisals, collective penalties, deportation and internment in concentration camps. Civilians by the millions were put to death in gas chambers.

The purpose, therefore, of the Civilians Convention is to ensure the dignity of the human person and prevent a recurrence of the horrors perpetrated against civilians in past wars, especially those committed during the last world war. In short, the Civilians Convention operates out of respect for the human person and safeguards civilians from abusive force arising out of a situation for which they are not the blame.

The applicability of the Civilians Convention is governed by Article 2 which provides, inter alia:

(T)he present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

Accordingly, States are bound by this provision regardless of how the conflict or hostilities are labeled.¹²¹ Additionally, States are bound to ensure effective application of the Civilians Convention regardless of the lawfulness or unlawfulness of the conflict. The absolute

necessity of such a requirement is aptly stated by Professor Lauterpacht as follows:

(I)n view of the humanitarian character of a substantial part of the rules of war it is imperative that during the war these rules should be mutually observed regardless of the legality of the war.¹²²

The commencement and termination of the applicability of the Civilians Convention is governed by Article 6 which provides that the entire Convention remains in force as long as there is no "general close of military operations." As to what is meant by the words "general close of military operations," the Commentary to the Civilians Convention states that a general close of military operations exists when there is an end to all fighting.¹²³

The Civilians whom the Civilians Convention is designed to protect are frequently termed "protected persons." Article 4 defines such persons as:

(T)hose who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.

Turning to the situation in the Middle East, the conclusion is inescapable that the Civilians Convention is applicable to the Israeli held occupied territories and that Israel is therefore bound to give its provisions full force and effect. Firstly, Israel and all the surrounding enemy Arab States are parties to the Convention.¹²⁴ Secondly, Israel

and its neighboring Arab States continue in a state of belligerency. Hostilities are daily reported. More specifically, Israel and the Arab States continuously penetrate each other's territories with elements of their armed forces. Furthermore, the Suez Canal cease fire line is constantly the object of hostilities. Accordingly, all such hostilities when considered together conclusively establish that military operations have not come to a close.

B. PROVISIONS PROHIBITING KILLING, TORTURE AND MALTREATMENT

Article 27 provides in part:

Protected persons are entitled, in all circumstances, to respect for their persons, their honor, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all attacks of violence or threats thereof and against insults and public curiosity.

Women shall be especially protected against any attack on their honour, particularly against rape, enforced prostitution, or any form of indecent assault.

Article 31 provides:

No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties.

Article 32 provides:

The High Contracting Parties specifically agree that each of them is prohibited from taking any measure of such a character as to cause the physical suffering or extermination of protected persons in their hands. This prohibition applies not only to murder, torture, corporal punishments, mutilation and medical or scientific experiments not necessitated by medical treatment of a protected person, but also to any other measures of brutality whether applied by civilian or military agents.

Article 27 is the basis of the Convention and proclaims the principle of respect for the human being and the inviolable character of the basic rights of individual men and women.¹²⁵ From Article 27 necessarily flows the specific prohibitions of Articles 31 and 32 which are designed to recall and prevent the barbaric and brutal atrocities which were perpetrated during both world wars, especially those committed by the Axis Powers during World War II. The prohibition against killing in Article 32 is directed against any form of homicide not resulting from a capital sentence adjudged by a court of law acting in accordance with the provisions of the Convention.¹²⁶ With respect to torture, the prescription

is absolute, that is, the prohibition is directed against all forms of torture whether they are part of penal procedure or are quasi or extra judicial acts.¹²⁷ Corporal punishment is prohibited simply to avoid inflicting physical suffering. Mutilation is forbidden because by its nature it is a reprehensible and especially offensive form of attack on the dignity of the human person.¹²⁸

By resolution on March 4, 1969, the United Nations Human Rights Commission established a special Working Group of Experts to investigate into alleged Israeli violations of the Civilian Convention within the occupied territories.¹²⁹ After a thorough investigation which included the taking of sworn testimony of witnesses, the Working Group of Experts issued a lengthy report listing and describing numerous examples of Israeli violations of the Civilian Convention.¹³⁰ The report discussed many cases involving illegal killing, torture and maltreatment.¹³¹

One 18 year old witness testified that two weeks after the commencement of the June 1967 hostilities, Israeli soldiers shot down her father before her eyes as they entered her house. Attempting to prevent the slaying, the soldiers fired upon her and wounded her severely in her arm and knee. At the same time her uncle and cousin had been badly beaten. In the aftermath her arm required amputation.¹³²

Another witness described how on one occasion the Israeli soldiers entered her house during lunch hour and lined her up along with her husband and eight children. After her husband did not give the information they requested of him, they savagely beat him. Following this she was tied up, whereupon the soldiers attempted to rape her. In

protest, her 15 year old son grabbed a knife and attacked the soldiers. For this her son was killed by the soldiers, after which the soldiers succeeded in raping her. The witness then continued by stating that while in flight to Egypt she was raped a second time by Israeli soldiers.¹³³ On another occasion a witness testified that she had been sexually molested by the Israeli Governor of Nablus Prison when she went to obtain permission to visit her husband.¹³⁴

Mass murder has been reported by several witnesses. One Arab witness testified that after the 1967 "cease fire" there was indiscriminate and mass shooting of 180 civilians by Israeli troops in Jerusalem streets.¹³⁵ This testimony was corroborated by the testimony of Archbishop Diodoros who observed the presence of corpses in the streets of Jerusalem shortly after the "cease fire."¹³⁶

Another witness reported that he had seen several adults being herded by the Israelis to the rubbish heaps outside Rafah refugee camp. They were then shot down and their bodies covered up through use of bulldozers.¹³⁷

On another occasion a witness reported the forcible eviction of villagers in Tel Awra. After five days of marching the Israelis selected 16 young men and shot them in cold blood.¹³⁸ This was corroborated by another witness.¹³⁹

The Working Group of Experts also reported cases of mass torture. Chiefly among these is the case where several persons were taken to the house of a wealthy farmer. They were placed in several rooms and forced against walls with their hands raised above their heads. They were forced to remain in such position for three days after which they were taken out

and told to dig trenches each day for three days. Following this they were made to stand holding heavy stones above their heads. They were then told to leave their villages or be shot and buried in the trenches they had dug.¹⁴⁰

In their report the Working Group of Experts made specific reference to Israeli torture and maltreatment that is accorded confined or detained persons in Israeli operated prisons.¹⁴¹ One witness displayed to the Working Group scars on his head and chest which he stated were inflicted upon him by rifles and bayonets during an interrogation.¹⁴² An Arab physician testified that he had treated at the Public Health Hospital at El-Arish patients brought from Israeli police posts. He treated them for blows inflicted by rifle butts on tender parts of the body, burns on the feet inflicted by hot wires or iron, and blows on the head which resulted in concussion and deafness. The witness also revealed that he had personally witnessed a patient undergoing electric shock torture by Israeli authorities. He finally stated that during the course of his service at the hospital from June 1967 until September 1968, there were at an average 10 cases of torture per day submitted by Israeli authorities to the hospital for treatment.¹⁴³

Perhaps the most shocking accounts of torture in Israeli confinement centers are contained in the Report on the Treatment of Certain Prisoners under Interrogation in Israel prepared by Amnesty International.¹⁴⁴ During the course of Amnesty's investigation a large number of torture cases were compiled describing torture of a most cruel and inhuman nature. One typical case history involved an Arab motor mechanic from Ramallah in the

West Bank who was arrested on July 12, 1968 and detained and interrogated for a period of seven months at both Ramallah and Sarafand Prisons. Amnesty summarized his treatment at Sarafand in the following manner:

1. Being handcuffed, hands behind back and feet shackled and being suspended by the wrists from a window bar. In this position he was whipped and one of the interrogators would stand on his feet shackles greatly increasing the strain.
2. Attaching alligator clips to his ears and genitals and passing an electric current through them.
3. Inserting a biro refill into the penis until it bled.
4. Running water on the weals produced by whipping and then puffing sulphur on them.
5. Crushing finger tips between the door hinges and frame.
6. Having a water hose inserted into his mouth and the tap turned on. An interrogator would then stand on his stomach, forcing the water out of his mouth.¹⁴⁵

Another shocking account of torture was related on April 17, 1970 to the United Nations Special Committee to Investigate Israeli Practices in the occupied territories. The Committee heard the testimony of a witness who had been imprisoned by the Israeli authorities from August 19, 1968 until September 1, 1969. He stated that he was accused of giving military information to the Ambassador of Iraq in Amman. He said that for 27 days he had undergone torture which included the pulling of his hair, eyebrows and whiskers. Additionally, he had been thrown on a floor, whereupon interrogators jumped upon him, burned him with cigarettes and beat him with

an electric fan, sticks and chairs. Police dogs were also set upon him.¹⁴⁶

In The Times of London, E. C. Hodgkin filed a report based upon a personal visit to the occupied territories wherein he stated:

A common belief in the occupied areas held by all resident there, not only by the Arabs is that anyone suspected of belonging to a guerrilla organization or or helping one in any way is tortured as a matter of routine, and there is a great body of evidence to support this belief. The methods reported to be used follow the pattern familiar from Algeria, Hungary, Vietnam and elsewhere, including electrical treatment as well as every form of beating. Torture is said to be carried out in the interrogation centers at the Russian Compound in Jerusalem, Sarafand Camp and Ashkelon gaol.¹⁴⁷

The summarized description of torture by Mr. Hodgkin is certainly confirmed by the preceding evidence. The evidence reveals a consistent pattern of atrocities which are in flagrant violation of the Civilian Convention. None of the killings were executed in compliance with a sentence imposed by a competent court of law. As discussed above, torture and maltreatment are absolutely forbidden and cannot under any circumstances be applied to protected persons.



C. PROVISION PROHIBITING THE DESTRUCTION OF REAL AND PERSONAL PROPERTY

Article 53 of the Civilians Convention provides:

Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.

The wording of this article is sufficiently clear so as not to require lengthy comment. The only exception authorizing destruction of property is in the case "when such destruction is rendered absolutely necessary by military operations." This has been interpreted to mean that destruction is only justified when imperative military requirements so demand.¹⁴⁸ As one authority stated:

(T)here is no exception when military operations are not taking place in the immediate area where the real or personal property is located.¹⁴⁹

The Working Group of Experts has reported numerous cases where Israeli authorities have undertaken mass destruction of Arab towns and homes.¹⁵⁰ One witness testified in respect to the destruction of the villages of Yalu, Beit-Nuba, and Emmaus in mid-October 1967. He stated that he had seen Israelis carrying away the ruins of these villages in trucks, and that on Christmas Day, 1967 he had seen the Israelis destroy the remaining homes in Emmaus as well as the mosque. After leveling the ruins the Israelis planted trees in their place. According to his testimony Emmaus

was destroyed in stages and was never involved in hostilities. Finally, he stated that after the villages had been destroyed, the land was sold by the Israelis.¹⁵¹ This account was corroborated by the testimony of an eyewitness Christian clergyman.¹⁵²

The time period and intervals of destruction, along with the planting of trees and later sale of property clearly indicate that the destruction of these three Arab villages was not necessitated by imperative military requirements but rather by other considerations. Perhaps one may better appreciate the purpose of the destruction by focusing on the following excerpts from a report which was submitted by a special deputation created and sent to the occupied territories by the National Council of the Churches of Christ in the United States:

The villages of Yalu, Beit-Nuba and Emmaus were occupied by Israeli military forces on June 9, 1967, with little or no destruction because the Arab population did not resist. Within the next five weeks, all homes and other buildings were systematically destroyed except for a church and two Muslim shrines in Emmaus which were later demolished.

....
The people of the villages, numbering over 4,000 have been scattered.

....
From a military viewpoint, the villages had formed a salient of Jordanian control in Palestine which challenges Israel's main road from Tel Aviv to Jerusalem.

From the political viewpoint, the destruction of the villages appears to be a particular expression of articulated Israeli policy that the Arabs must be taught by prompt, destructive reprisals that insubordination will not be tolerated.

Economic considerations may also be involved. Israel's expressed policy is to provide for the settlement of as many Jews as possible.

The fertile land of the three villages (considerably more than 3,000 acres) is now being cultivated and harvested by Israelis.

Israeli officials stated clearly to the Deputation that there is no plan to rebuild the three villages or to return the inhabitants to their lands.¹⁵³

The same report describes that:

In various other places homes of individuals alleged to have collaborated with commandos and homes of relatives of alleged members of 'Al-Fatah' (an Arab liberation movement) have been dynamited by military authorities. Public trials and hearings on the allegations are not held, so it is not possible to know in which cases the allegations are indisputable. The justification which is given, both for the destruction of individual homes and for the dynamiting of larger sections of villages, is the political purpose of making the Arab residents accept Israel's rule or leave the occupied territories.¹⁵⁴

In an official report, United Nations Secretary General U-Thant made note of the destruction in occupied East Jerusalem.¹⁵⁵ Based on reports from Ambassador Thalmann, his personal representative who observed the situation in occupied Jerusalem, the Secretary-General stated that about 135 houses in the Magharibah Quarter, the area near the Wailing Wall, were dynamited by Israeli authorities, thus making 650 Arabs homeless as a matter of convenience to Israeli officials.¹⁵⁶

There have been unofficial reports of mass destruction in non-Arab newspapers. One third party report stated:

Within a week of the end of the fighting (of June 1967) the bulldozers were at work in the old city (Jerusalem) and before the end of June, they (the Israelis) had made nearly 4,000 Arabs homeless.¹⁵⁷

On June 27, 1969, over two years after effective Israeli occupation, an American weekly reported:

Since occupying the City (of East Jerusalem) the Israelis have bulldozed an Arab section to create a broad plaza, and their archaeologists have made extensive excavations to uncover more of the (wailing) wall.¹⁵⁸

An American daily reported on June 22, 1969:

A hundred Arabs were given a week to leave their land which was appropriated by Israeli authorities near Hebron.¹⁵⁹

Then on March 26, 1970, the same daily reported:

The Israeli Government announced today that it would assist in the settlement of 50 families in Hebron, an Arab town in the occupied part of Jordan.¹⁶⁰

Mr. Hodgkin gives perhaps the most striking account of mass destruction in his article cited earlier. He stated:

On the latest pre-Halhul (Halhul is a village between Bethlehem and Hebron) tally, 7,140 Arab houses have been blown up. This includes entire villages which have been destroyed for security reasons, but in the majority of cases the houses were blown up because somebody suspected of connection with guerilla activity was living in them. What particularly angers Arabs is that destruction often takes place as soon as a suspect is carried off. There is no waiting for him to be charged, let alone convicted. Nor does it matter if he is not the owner of the house. Innocent or guilty, tenant or visitor or owner, the explosives go in. Requisition of buildings is a lesser irritant, though the conversion of the brand-new hospital in East Jerusalem to police headquarters is a constant affront.¹⁶¹

Based upon this evidence the conclusion is inescapable that the mass destruction of property was not necessitated by imperative military necessity. The evidence shows that the destruction has been taking place continuously for over two years, a period in which Israel has been in effective control of the occupied territories. It appears that the destruction

was required not by imperative military necessity but rather by economic, cultural and political reasons, factors which are not included when considering imperative military requirements.

D. PROVISION PROHIBITING THE LOOTING OF PROPERTY

The Second paragraph of Article 33 of the Civilians Convention states in clear and unequivocal language that "(P)illage is prohibited." This provision is absolute in character and without exception. Under no circumstances may looting be ordered or authorized. It is designed to protect the real and personal property of individuals and outlaw the infamous practice of booty which was considered in former wars as part of a soldiers pay.¹⁶²

In the report of the Working Group of Experts, the testimony of witnesses revealed that there was general and thorough looting of whole villages, hospitals and places of worship.¹⁶³ In one case a witness reported that Israeli troops dismantled and removed machinery from factories and workshops in Jericho.¹⁶⁴ In another case a witness stated that food contained in two shops owned by him was taken away by Israeli forces. Later when the villagers were fleeing to Egypt an Israeli helicopter intercepted the villagers and forced them to surrender all their valuables.¹⁶⁵ A physician testified that the Israelis removed the dispensary from his hospital.¹⁶⁶

A final appreciation of the extent of the looting of property can be gained by looking at the report of the Commissioner General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East.

The report stated:

In the Gaza Strip during and immediately after the hostilities, ninety of the Agency's 100 schools were damaged and looted in varying degrees to the extent of an estimated \$220,000 in value.¹⁶⁷

E. PROVISIONS PROHIBITING REPRISALS AND COLLECTIVE PENALTIES

Article 33 provides in part:

No protected person may be punished for an offense he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.

Reprisals against protected persons and their property are prohibited.

The absolute and unequivocal prohibitions contained in Article 33 were necessitated by the experience of World War II, during which the Axis Powers engaged in a reign of terror accompanied by collective punishments and reprisals that shocked the conscience of mankind. The prohibitions

against collective penalties and reprisals do no more than recognize a fundamental principle of humanity and justice, namely that penal responsibility is personal in character and that no person should be punished for an act for which he is neither morally nor legally responsible. During past wars, especially the last world war, collective penalties were inflicted to prevent and repress hostile acts against a belligerent and as such they amounted to intimidatory measures aimed at terrorizing the civilian population. Used as an intimidatory and terrorist device, collective penalties strike at the guilty and innocent alike and offend against all principles of humanity and justice. It is for that reason that the provisions forbidding collective penalties is followed formally by the prohibition of all methods of intimidation and terrorism.¹⁶⁸

Reference has already been made to the large number of homes destroyed by Israeli authorities since their effective occupation of Arab territories. In many cases these homes were destroyed for the purpose of administering reprisals and collective penalties. Witnesses testified before the Working Group of Experts that their homes were destroyed because they had failed to provide the information requested by Israeli officials or because of a suspected connection with the resistance movement.¹⁶⁹ Corroboration of this can be found in the article by Mr. Hodgkin, earlier cited, wherein he describes that:

(I)n the majority of cases the houses were blown up because somebody suspected of connection with guerilla activity was living in them.

....

(T)he Israelis say that everything is the fault of the guerillas -- the fedayin. If

they would only stop their raiding and bomb throwing there would be no need for repression.¹⁷⁰

Additionally, an American daily reported:

Israeli authorities recently began demolishing homes of Arabs who had been uncooperative in investigations of terrorism or who had declined to come forward with information.¹⁷¹

Confiscation has also been resorted to by Israeli officials as a collective penalty in violation of Article 33. On November 2, 1968, Arab shop owners did not open their stores in occupied Jerusalem as a protest measure. A few hours later Israeli officials responded by confiscating the stores of 15 Arab shop owners.¹⁷²

Another method of reprisals or collective penalties imposed upon the Arab population is the curfew. In Nablus the Israelis clamped a full curfew on the town after Arab shop owners refused to open their stores.¹⁷³ Mr. Hodgkin gives us a vivid description of the purpose and harshness of curfews in the following words:

(Curfews)...are a weapon of authority in every difficult situation. They can, however, be applied as precautionary measures or as punishments, and the Israelis prefer to use them as punishments. The example of Beit Sahur, just outside Bethlehem, is fresh in everyone's memory. This is a community of settled tribesmen, each family living in a small box-like stone house. It was near this straggling village that rockets were installed, two of which fell

in Jerusalem last August. The Israelis claimed, no doubt with reason, that some of the villagers must have known what was going on. So a total curfew was imposed. For a week nobody was allowed to leave their house or to open a window. As the latrines are outside the houses, and as it is very hot in Palestine in August, the result was not pleasant. Outside the livestock of the villagers died or was requisitioned. A modified curfew persisted for some weeks longer.¹⁷⁴

Curfew has also been used as a measure of intimidation. A former journalist of The Guardian of London testified before the Special Committee to Investigate Israeli Practices in Occupied Territories that he witnessed curfews imposed for more than five days affecting food and water supplies worse than anything he had experienced in four years as a prisoner of war in a German prison camp. He continued by stating that they were a part of collective punishments designed to create a state of anxiety and shock in order to intimidate refugees to leave the occupied territories.¹⁷⁵

In the November 29, 1969 issue of the Sunday Times of London, a report refers to curfews accompanied by terror and maltreatment imposed in Gaza by describing an account given by an Israeli soldier as follows:

In the tougher cases, the same curfew rules applied, but only the women were kept indoors. The men were driven into the desert in trucks and sometimes beaten up on the way. When they arrived at an isolated spot

they were divided according to age into two groups. They were then forced to squat on their haunches in the sun under guard for several hours he (the Israeli soldier) says for as long as eight hours at a time.

(H)alf a dozen soldiers told him (the Israeli soldier) that the best way to combat terrorism was to bind suspects tightly with electric wire on arms and legs, and leave them in the sun.¹⁷⁶

That reprisals and collective penalties are undertaken with official sanction is made clear by a statement made by the Israeli Defense Minister Moshe Dayan. The New York Times reported Mr. Dayan to have described the measures undertaken in the occupied territories as necessary "to make sure the resident Arabs know that Israel represents the governing authority."¹⁷⁷ The same report continued:

Asked if Israel was applying collective punishment in response to (resistance) activities, Mr. Dayan said he preferred to call it neighborhood punishment.¹⁷⁸

F. PROVISIONS PROHIBITING THE DEPORTATION OR TRANSFER OF CIVILIAN POPULATION IN OCCUPIED TERRITORIES

Article 49 of the Civilians Convention provides, inter alia:

Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.

Nevertheless the occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.

The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.

The need for Article 49 was necessitated by the memory of forced deportations by Germany of millions of men, women and children during World War II and the replacement of these people by German civilians.¹⁷⁹ The provisions are absolute except when required by imperative military necessity or when necessary to secure the safety of the population, that

is, when the presence of the population is endangered by military operations or when the presence of civilians seriously jeopardizes military operations.¹⁸⁰

In the report of the Working Group of Experts witnesses testified as to enforced deportation and transfers of leaders and professionals, including teachers. At times witnesses testified as to whole villages being the subject of transfer. In some instances Arab civilians were forced to flee as a result of direct Israeli threat or terror.¹⁸¹ For example, one physician testified that he had been deported against his will for no apparent reason. The same witness stated that Arab professionals and leaders were being deported in order to deprive the Arab people of their leadership and thereby erode their morale and eventually force the Arab population to leave the occupied territories.¹⁸² In Bethlehem, according to one witness, loudspeakers were used to encourage civilians to flee to Jericho "(I)f (they) wished to save (their) lives."¹⁸³ The use of loudspeakers to influence civilians to flee their homes was corroborated by other witnesses.¹⁸⁴ There are numerous other examples contained in the report of the Working Group of Experts.

In a report of the United Nations Secretary-General based upon observations made by special Representative Nils-Goran Gussing in the occupied territories, reference is made to shooting in the air incidents. The report states:

The Special Representative felt that it was likely that many such incidents had taken place and that the Israeli forces had not viewed unfavorably the impact of such incidents on the movement of

population out of the area. At no point during discussions on this subject was the Special Representative ever informed of any action taken by the Israeli authorities to reassure the population.

Whatever the policy of the Israeli Government may have been as regards the population, it seemed clear to the Special Representative that at the local level certain actions authorized or allowed by local military commanders were an important cause of their flight.¹⁸⁵

The evidence presented reveals that the large number of deportations was not necessitated by military operations or out of a desire to safeguard the population. Rather it appears that the removal of civilians was the immediate result of illegal terror or coercion, either direct or indirect. Under such circumstances the transfers were in clear violation of Article 49.

Israel has also violated the provisions of Article 49 by its refusal to allow those Arab refugees residing in neighboring Arab States to return to their homes in the occupied territories. These Arab refugees number approximately 800,000, almost all of whom wish to return to their homes.¹⁸⁶ In a survey conducted among the refugees, it was revealed that approximately 91 per cent of the refugees desire to return to their homes immediately rather than wait until such time as Israel withdraws from the occupied territories. Return, however, has been relatively impossible in view of the fact that Israel has sealed off the borders of the occupied territories.¹⁸⁷ Out of over 150,000 Arab refugees who had applied to

return to areas they fled, only 14,000 have been permitted to do so by Israeli officials.¹⁸⁸

Even if it could be realistically assumed that the Israeli Government was not wholly responsible for the population transfers, it is nevertheless responsible for sealing off the boundaries and not allowing the return of the refugees to their homes. While hostilities do indeed still exist between Israel and its neighboring Arab States, they do not consist of such a magnitude so as to render unsafe all the areas from which the refugees fled. Israel, therefore, cannot satisfy Article 49 by simply permitting token return.

If the deportation and continued refusal to allow the refugees to return to their homes is not rendered necessary by military operations or the need to safeguard the population, then the question can rightly be asked, what is the motive behind such enforced and continuing deportation? The motive appears to be none other than one of illegal territorial aggrandizement. Mr. Hodgkin describes this motive in the following manner:

I must confess that when going around the West Bank I found it difficult to avoid the conclusion that this (annexation) is Israel's aim. Israelis see the Jordan River as historically and strategically a natural frontier. So the new settlements go up on the West Bank, the new buildings rise like mushrooms in and around Jerusalem, the new military roads and communications are constructed. These are the evidence of a people determined to stay where they are.

The only inconvenience is the presence of a rather a lot of Arabs -- 650,000 on the West Bank and another 450,000 on the Gaza Strip. As it would be much simpler if these were not there, every effort is being made to persuade them to go. The most important ones to be got rid of are those with education and authority.¹⁸⁹

The eventual realization of a greater and expanded Israel has been the aim of the Zionist-Israeli government since the time of its creation. Former Israeli Prime Minister David Ben-Gurion wrote: "Only now (1951) ...have we reached the beginning of independence in a part of our small country."¹⁹⁰ He continued: "To maintain the status quo will not do. We have set up a dynamic State, bent upon creation, reform, building and expansion."¹⁹¹ In reference to Israel's annexation of Jerusalem, Mr. Dayan states: "(I)t is the fulfillment of a people's ancestral dream."¹⁹² Later he spoke of the need to retain the West Bank and Gaza for "To deny such yearning means to ignore the basis of the return to Zion."¹⁹³ Regarding the Golan Heights, Yegal Allon, Israel's Deputy Prime Minister, stated: "The Golan is no less part of ancient Israel than Hebron and Nablus, for did not Jephtha judge there?"¹⁹⁴ It was Allon who called for settlements to "strike roots" in the Jordan Valley, the Hebron, the Golan Heights and Gaza, claiming there was historical justification.¹⁹⁵

Clearly, such territorial imperatives only serve to confirm that the mass forcible transfers and continued refusal to allow the Arab refugees to return to their homes are in violation of Article 49. As final corroboration the statement of Mr. Dayan on Face the Nation is relevant.

In responding to a question as to whether there is any possible way in which Israel could absorb the Arabs in the occupied territories, he stated:

Economically we can; but I think that it is not in accord with our aim to the future. It would turn Israel into either a bi-national or poly-Arab-Jewish State instead of a Jewish State, and we want to have a Jewish State. We can absorb them but then it won't be the same country.¹⁹⁶

It is because of its territorial imperatives that Israel is committing a clear violation of Article 49 by transferring parts of its own population to new settlements in the occupied territories. The prohibition of such transfers is absolute. Reference has already been made to the recently announced Israeli resettlement of Hebron.¹⁹⁷ However, even prior to that announcement, Israeli authorities admitted that they had created 14 Israeli settlements in other occupied areas, principally in the Golan Heights.¹⁹⁸ Additionally, Israel is preparing housing projects in occupied Jerusalem for approximately 40,000 Jewish immigrants.¹⁹⁹

V. APPRAISAL AND RECOMMENDATIONS

Ultimate resolution of the Middle East problem which has been surrounded by so much bloodshed and human deprivation must be based upon a notion of sovereignty that recognizes and implements an inclusive concept of nationality which does not discriminate or privilege within the nation-State on the basis of religion, race or ethnic background. It appears that Zionism as presently constituted is unwilling to permit any alteration of the exclusive characteristics of Zionist-Israel.²⁰⁰

However, the prime immediate concern of the world community should be the restoration of human dignity in the occupied territories through effective enforcement of the Civilians Convention. Article 1 of the Civilians Convention provides that "The High Contracting Parties undertake to respect and to ensure respect of the present Convention in all circumstances (emphasis supplied)." Accordingly, when a party to the Civilians Convention refuses to carry out its obligations, the other States bound by the Civilians Convention can and must endeavor to bring the recalcitrant State back to the respect of its engagements.²⁰¹ To this extent the organized world community is under a moral as well as a legal obligation to devise an adequate and systematic sanctioning procedure. Failure to do so will only result in continued and increased violence in the occupied territories. It is axiomatic that when international law is not enforced by the world community through means of adequate sanctions, a transgressing State is more able and inclined to commit further violations.²⁰² In counteraction the victims are thrown into despair and forced to engage in responding violence as the only apparent effective means to redress injustices.²⁰³ Nevertheless, an indispensable prerequisite to effective

implementation of the sanctioning process as it would pertain to Israeli practices in the occupied territories is wide public awareness and understanding of the humanitarian provisions of the Civilians Convention and how these provisions are specifically being violated. Without an aroused public conscience an orderly and progressive sanctioning process may suffer and fail from lack of full and enthusiastic world support.

FOOTNOTES

1. Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949, 6 U.S.T. 3516, T.I.A.S. 3365, 75 U.N.T.S. 287.
2. A.M. Lilienthal, *The Other Side of the Coin* (1965) 29.
3. N. Goldmann, *The Future of Israel*, 482 For. Affairs 443 (1970).
4. T. Herzl, *The Jewish State* (1896); as excerpted in Laqueur (ed.), *The Israel-Arab Reader* 6 (1969).
5. *id* at 9.
6. M. Lowenthal, *The Diaries of Theodor Herzl*, 124 (1956).
7. F. J. Khouri, *The Arab Israeli Dilemma* 4 (1968).
8. The Basle Declaration is reproduced in Laqueur, *supra* note 4 at 11-12.
9. W. T. Mallison, Jr., *The Zionist Israel Juridical Claims to Constitute "The Jewish People" Nationality Entity and to Confer Membership in it: Appraisal in Public International Law*, 32 Geo. Wash. L. Rev. 999 (1964).
10. Quoted in A. Taylor, *Prelude to Israel*, 6 (1959).
11. Quoted in I. Cohen, *the Zionist Movement*, 78 (1946).
12. Jerusalem Post, October 29, 1967. At this point it should be stated that the return to Zion being undertaken by the political Zionists should be distinguished from the return envisioned by Cultural/Spiritual Zionists which envision Palestine merely as a center of the Jewish religion and culture. It is the product of a religious, emotional and mystical attachment to the land of Israel and advocates no return on the basis of force. In this sense Cultural/Spiritual Zionism, as opposed to political Zionism is consistent with individual freedom for all. See Mallison, *supra* note 9, at 995-996.
13. The Institute of Palestine Studies, *The Palestine Question* 27-28 (1968) (hereafter referred to as Algiers Seminar). This text is the work of a seminar of three committees of Arab jurists assembled at Algiers from July 22-27, 1967.
14. For articles providing a more inclusive interpretation of Biblical promises than the exclusivist interpretation of the Zionists see the works of the following distinguished biblical scholars

and authorities in religion appearing in Palestine and the Bible, published by the Institute for Palestine Studies, Beirut, Lebanon: Professor A. Guillaume, Dr. E. Berger, Prof. Frank Staggs, Dr. O. Sellers, Rt. Rev. J.G. Sherman, STD.

15. A. Guillaume, Zionists and the Bible, appearing in Palestine and the Bible, id at 14-15.
16. W. M. Langer, An Encyclopedia of World History 30-31 (1962); E. Kraeling, Rand McNally Historical Atlas of the Holy Land 59 (1959); Khouri, supra note 7 at 1.
17. Langer, id at 31-32; Khouri id, at 2.
18. Algiers Seminar, supra note 13 at 17.
19. Y. Blum, Historic Titles in International Law, 99, 129, (1965).
I. MacGibbon, Some Observations on the Part of Protest in International Law, 30 Brit. Y. B. Int'l L. 306 (1953).
20. The Island of Palmas Arbitration, 2 U.N. Rep. Int. Arb. Awards 829.
21. S. Rosenne, Directions for a Middle East Settlement - Some Underlying Legal Problems, 33 Law and Contemp. Prob. 50, (1968).
22. Esco Foundation for Palestine, 1 Palestine - A Study of Jewish, Arab and British Policies 43-48 (1947).
23. J. Davis, The Evasive Peace 3 (1968).
24. id at 3.
25. Khouri, supra note 7 at 4.
26. As quoted in Algiers Seminar, supra note 13 at 38.
27. Royal Institute of International Affairs, Information Paper No. 20, Great Britain and Palestine 1915-1945, 8 (1946).
28. L. Snyder, Fifty Major Documents of the Twentieth Century 25-26 (1955).
29. Quoted in Information Paper No. 20, supra note 27 at 9.
30. Mallison, supra note 9, at 1005.
31. id at 1002.
32. The League of Nations Mandate for Palestine is set forth in Laqueur, supra note 4, 34-42.
33. Mallison, supra note 9, at 1002, 1033.

- 34. id at 1007.
- 35. id at 1019-20.
- 36. id at 1024.
- 37. id at 1010.
- 38. Harvard Research in International Law, Draft Convention on the Law of Treaties, 29 Am. J. Int'l L. Supp. 946 (1935).
- 39. 1. Oppenheim's International Law 952, (Lauterpacht 8th ed. (1955)).
- 40. id at 953.
- 41. id at 957.
- 42. L. Stein, The Balfour Declaration 468 (1961).
- 43. id at 470.
- 44. Mallison, supra note 9, at 1012.
- 45. Based upon Stein, supra note 42, passim.
- 46. id at 515.
- 47. id at 521.
- 48. C. Weizmann, Trial & Error, 207-208 (1949).
- 49. Stein, supra note 42 at 525.
- 50. id at 531.
- 51. id
- 52. id at 196-197.
- 53. Esco Foundation, supra note 22, at 106.
- 54. E. Lauterpacht, Some Concepts of Human Rights, 11 How L. J. 268-269, 271 (1965).
- 55. Israel Office of Information, Israel's Struggle for Peace 7 (1960).
- 56. Lauterpacht, supra note 54, at 271.
- 57. A. Nutting, The Tragedy of Palestine from the Balfour Declaration to Today; appearing in M. Khadduri, The Arab Israeli Impasse, 54 (1968).

58. id at 55. The Jewish Agency was recognized as a public body by Article 4 of the Mandate which provided that it was to advise and cooperate with the Administration of Palestine (Great Britain), "(I)n such economic, social and other matters as may affect the establishment of the Jewish national home and the interests of the Jewish population in Palestine." Additionally, Article 4 recognized the Zionist Organization as being the Jewish Agency. For a scholarly study relating to the status and political activities of the Zionist Organization/Jewish Agency see W. Mallison, Jr., The Legal Problems Concerning the Juridical Status and Activities of the Zionist Organization/Jewish Agency: A Study in International Law and U.S. Law, Wm. & Mary L. Rev. 556-629 (1968).
59. Davis, supra note 23, at 22.
60. Nutting, supra note 57, at 56.
61. D. Peretz, *The Middle East Today*, 267, (1963).
62. Nutting, supra note 57, at 56.
63. Peretz, supra note 61, at 267-268.
64. id at 270.
65. id
66. Nutting, supra note 57, at 56.
67. The MacDonald White Paper of 1939 is reproduced in Lacqueur, supra note 4, at 64-75.
68. Davis, supra note 23, at 30.
69. Peretz, supra note 61, at 273.
70. id at 274.
71. The Biltmore Declaration is set forth in Laqueur, supra note 4, at 77-79.
72. Peretz, supra note 61, at 274.
73. id
74. Davis, supra note 23, at 36.
75. id at 36-37. The partition resolution is set forth in part in Laqueur, supra note 4, at 113-124.

76. Peretz, *supra* note 61, at 277.
77. State of Israel Proclamation of Independence set forth in Laqueur, *supra* note 4, at 125-128.
78. Q. Wright, The Middle East Problem, 4 Int'l Lawyer 370 (1970).
79. *id.*
80. Oppenheim, *supra* note 39, at 424-426. See also F. Sloan, The Binding Force of a "Recommendation" of the General Assembly of the United Nations, 25 Brit. Y. B. Int'l. L. 4-5, 31 (1948).
81. 3 U. N. SCOR, 253d meeting 265-267 (1948).
82. T. Kahng, Law, Politics and the Security Council 97-98 (1964).
83. Davis, *supra* note 23, at 46.
84. *id.* at 45.
85. Peretz, *supra* note 61, at 277.
86. 4 U. N. GAOR, Ad Hoc Pol. Comm., Annex, Vol. II, U.N. DOC A/927 (1949)
87. *id.* at 8.
88. T. Draper, Israel and World Politics 6 (1968).
89. *id.* at 18.
90. Davis, *supra* note 23, at 46.
91. *id.* at 47.
92. *id.*
93. *id.* at 48.
94. U.S. Senate Comm. on Foreign Relations, a Select Chronology and Background Documents Relating to the Middle East, 91st Cong., 1st Sess., 24.
95. *id.* at 50-51.
96. J. Davis, Why Are There Still Arab Refugees?, The Arab World 3 (Dec. 1969-Jan. 1970), Mr. Davis is former Commissioner General of UNRWA.

97. S.C. Resolution 242, U.N. Doc S/8247 (1967).
98. Israel Office of Information, *supra* note 55, at 8.
99. Working Party of the American Friends Service Committee and the Canadian Friends Service Committee, Search for Peace in the Middle East 41 (1970).
100. *id* at 40-41.
101. A. Elon, Israeli's Believe War is Inevitable, Life Magazine, Feb. 6, 1970, at 48b. Elon is a columnist for Tel Aviv's largest newspaper, Ha' aretz.
102. Oppenheim, *supra* note 39, at 574.
103. Wright, *supra* note 78, at 364; M. McDougal and F. Feliciano, Law and Minimum World Public Order 739 (1961).
104. *id*.
105. Kellogg-Briand Pact is set forth in part in Snyder, *supra* note 28, at 65-67.
106. 5 Whiteman, Digest of International Law 880-881 (1965).
107. *id* at 881.
108. 119 U.N.T.S. 3; 2 UST 2394; T.I.A.S. 2361.
109. It should be pointed out that one author, against the weight of authority, is of the opinion that territorial acquisition through conquest is permissible when achieved as a result of lawful defensive action, S. Schwebel, What Weight to Conquest? 64 Am. J. Int'l L. 345-347 (1970).
110. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, 6 U.S.T. 3114, T.I.A.S. 3362, 75 U.N.T.S. 31.
111. Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949, 6 U.S.T. 3217, T.I.A.S. 3363, 75 U.N.T.S. 85.
112. Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949, 6 U.S.T. 3316, T.I.A.S. 3364, 75 U.N.T.S. 135.
113. *supra* note 1.

114. J. Pictet, The Need to Restore the Laws and Customs Relating to Armed Conflicts, 1 ICJ Review 23 (March 1969).
115. id.
116. J. Pictet (ed.), Course of Five Lessons on the Geneva Conventions, 5 (1962).
117. id; supra note 114.
118. G. Draper, The Geneva Conventions of 1949, 114 Recueil Des Cours 73 (1965).
119. id.
120. J. Pictet, The New Geneva Conventions for the Protection of War Victims, 45 Am. J. Int'l L. 462, 465 (1951).
121. J. Pictet, (ed.) Commentary IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 20-21 (1958).
122. 2 Oppenheim's International Law 218 (H. Lauterpacht (ed.), 7th ed. (1952).
123. supra note 121, at 62.
124. U.S. Department of State, Treaties in Force 324-325.
125. supra note 121, at 199-200.
126. id at 222.
127. id at 223.
128. id at 224.
129. Commission on Human Rights Resolution No. 6 (XXV), March 4, 1969.
130. U. N. ECOSOC Doc. No. E/CN.4/1016/Add. 1, February 11, 1970.
131. id at 16-27.
132. id at 18.
133. id at 20.
134. id at 21.
135. id.
136. id.

- 137. id at 22.
- 138. id.
- 139. id.
- 140. id at 23.
- 141. id at 32-37.
- 142. id at 33.
- 143. id at 35.
- 144. Amnesty International, London, Report on the Treatment of Certain Prisoners under Interrogation in Israel (Apr. 1970).
- 145. id at 8.
- 146. U.N. Press Release HR/504, April 17, 1970.
- 147. The Times (London), October 28, 1969.
- 148. supra note 121, at 302.
- 149. W. J. Mallison, Jr., The Geneva Convention for the Protection of Civilian Persons: An Analysis of Its Application in the Arab Territories Under Israeli Occupation, The Arab World 4 (June 1959).
- 150. supra note 130, at 47-60.
- 151. id at 47.
- 152. id at 48.
- 153. National Council of the Churches of Christ (475 Riverside Drive, N.Y., N.Y.), Report of Deputation to the Middle East 6-7 (1968).
- 154. id at 7.
- 155. Report of the Secretary General Under General Assembly Resolution 2254 (ES-V), A/6793, S/8146 (1967).
- 156. id at para. 113.
- 157. The Guardian (London), March 4, 1968.
- 158. Time Magazine, June 27, 1969, at 26.
- 159. N.Y. Times, June 22, 1969.

160. N.Y. Times, March 26, 1970.
161. supra note 147.
162. supra note 121, at 226.
163. supra note 130, at 55-59.
164. id at 58.
165. id.
166. id.
167. U.N. GAOR, 23rd Sess., Supp. No. 13, A/7213, para 105 (1968).
168. supra note 121, at 225-228.
169. supra note 130, at 61.
170. supra note 147.
171. N.Y. Times, November 11, 1969.
172. N.Y. Times, November 3, 1968.
173. id.
174. supra note 147.
175. U.N. Press Release HR/483, April 2, 1970.
176. Sunday Times (London), November 29, 1969.
177. N.Y. Times, November 13, 1969.
178. id.
179. supra note 121, at 278-279.
180. id at 280.
181. supra note 130, at 62-74.
182. id at 63.
183. id at 66.
184. id.

185. Report of the Secretary General Under General Assembly Resolution 237, A/6797, S/8158 (1967) paras. 27-28.
186. *supra* note 96, at 3.
187. U.N. Press Release HR/490, April 8, 1970.
188. U.N. Press Release HR/483, April 2, 1970.
189. *supra* note 147.
190. D. Ben-Gurion, *Rebirth and Destiny of Israel* 402 (1954).
191. *id* at 419.
192. *Jerusalem Post*, August 10, 1967.
193. *Jerusalem Post*, December 13, 1967.
194. *Jerusalem Post*, August 16, 1967.
195. *N.Y. Times*, August 16, 1967.
196. *Face the Nation* (CBS Television Network), June 11, 1967.
197. See text accompanying n. 160.
198. H. Koch, Jr., *Six Hundred Days* 52 n. 94 (1969).
199. *supra* note 130, at 72.
200. See Defense Minister Dayan's statement on *Face the Nation* quoted *supra* note 196. See also to the same effect Foreign Minister Aba Eban's statement in *Le Monde*, English weekly section, February 25, 1970.
201. *Pictet*, *supra* note 116, at 26.
202. McDougal and Feliciano, *supra* note 103, at 293-294.
203. See Laswell, *World Politics and Personal Insecurity*, 40-56 (1965).

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